IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/08/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K.MISRA

AND

THE HONOURABLE MR. JUSTICE S.R.SINGHARAVELU

WRIT PETITION No.18193 of 1998

K. Raju
LNK No.834270035
CISF Unit,Chennai Port Trust
Chennai.
.. Petitioner

-VS-

The Commandant
CISF Unit, Chennai Port Trust
Chennai.
.. Respondent

Petition filed under Article 226 of The Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus,calling for the records relating to the order passed by the respondent dated 19.10.1996 in his order No. V-15014/ESTT-I/96/KR/9771 and quash the same and to direct respondent to regularise the period of suspension of the petitioner and to refund the amount recovered from the petitioner.

!For petitioner ... Mr.M.Md. Ibrahim Ali

^For respondent ... Mr.K.Veeraraghavan
Senior Central Govt.
Standing Counsel

:ORDER

(Order of the Court was made by S.R.SINGHARAVELU,J.,)

The petitioner has filed this Writ Petition for the issue of a Certiorarified Mandamus, calling for the records relating to the order passed by the respondent dated 19.10.1996 in his order No. V-15014/ESTT-I/96/KR/9771 and quash the same and to direct respondent to regularise the period of

suspension of the petitioner and to refund the amount recovered from the petitioner.

2. The case of the petitioner is that he joined in CISF as Constable in the Year 1983 and he was posted as L/NK and transferred to Chennai Port Trust on 26.2.1996. On 31.7.1978 he was issued with a Memo under Rule 34 of the CISF Rules on the allegation that he was charged with gross indiscipline, misconduct and neglect of duty. He submitted his written statement on 6.8.1996 denying the allegations levelled against him. An enquiry was conducted and the Enquiry Officer has filed his report stating that the charge levelled against the petitioner has partly proved. On receipt of the Enquiry report, the respondent passed the final order awarding the penalty of reduction of pay by two stages Rs.1,040/- to Rs.1000/- in the time scale of pay of Rs.825 -15-900-EB-20-1200 (excluding Special Pay Rs.15/-) for a period of two years with effect from November,1996. It is the further case of the petitioner that Enquiry was not conducted properly as per Rules and there is no direct evidence to prove that the alleged offence has been committed by Constable Mohamed Sultan with the connivance of the petitioner. In the absence of any proof and direct evidence, the impugned order is liable to be quashed. Hence the present Writ Petition.

3. The respondent has filed a counter stating that enquiry was conducted as per CISF Rules and as per the report of the Enquiry Officer only the respondent has passed the impugned order. As per the Rules, creating nuisance at the duty post, failed to inform the higher official amounts to grave misconduct and act of indiscipline on the part of the petitioner. Further, the petitioner did not avail the opportunity of filing appeal against the impugned order in time.

4. As seen from the final orders it is made clear that a sum of Rs.713.70 of various denominations were recovered from the Telephone Cable box and it was reported that Constable Md. Sultan Lone with the co-operation of L/Naik K.Raju collected a sum of Rs.713.70 as illegal gratification from the men/vehicle crew entered MPT through Gate No.10. Lance Naick K. Raju, being the senior detailed at in Gate No.10 failed to correct the activities of Constable Md. Sultan Lone and he did not report the matter to the Shift I n-charge nor to any superior officer.

5. A perusal of the final order dated 31.3.1997 passed against the Constable Md. Sultan Lone of CISF Unit, SCCL Head Quarters, Bellampalli Goleti Area, it is found that a sum of Rs. 713.70 was taken into custody of Unit Commander. A penalty of reduction of pay to the lower stage i.e. Rs.900/- to Rs.855/- in the time scale of Rs.825-15-900-EB-20-1200 was ordered for a period of two years with effect from the date of issue of that order. It was further directed that Constable Md.Sultan Lone will earn increment of pay during the period of reduction on the expiry of that order, the reduction will not have the effect of postponing his future increment of pay. Further, suspension period from 30.6.1996 to 6.12.1996 was regularised as suspension only and that he will not get anything more than the subsistence allowance already paid to him.

6. But in this case, reduction of pay from Rs.1,040/- to Rs.1,000/- with effect from 1.11.1996 was ordered and that it was directed that he will earn increment during the period of reduction and on expiry of that period, such reduction will have the effect of postponing the future increment. The period of suspension was also treated as suspension period and not as duty period. Thus, there is variance in the penalty awarded between the petitioner and Constable Md. Sultan Lone.

7. The records do show that one was directly responsible and the other was indirectly responsible for the custody of Rs.713.70, which was considered to be the illegal gratification. In fact, it is only from Md. Sultan Lone the amount was recovered and the allegation against the present petitioner was that he did not report the same to the higher officer and had by this gesture shown tacit support to the action of Md. Sultan Lone. Therefore, the degree of punishment should either be equal or lesser than that of Md. Sultan Lone as he only was directly responsible for receiving the illegal gratification and what the petitioner did was only tacit silence by way of support to the action of Md. Sultan Lone. It is therefore, the degree of punishment that is awardable to the petitioner is only lesser than that of Md. Sultan Lone if not equal to the same.

8. True it is that it has been observed in STATE OF U.P. VS JAIKARAN SINGH (2003 SCCC(L& S) 1176) that if charges are established and there is no lacuna in the procedure of departmental enquiry, normally the Court in exercise of its jurisdiction under Article 226, does not interfere with the quantum of punishment. However, if it feels that the punishment inflicted to be grossly unjust and shocking the conscience, it may interfere therewith in appropriate cases.

9. In that case, the punishment of dismissal was altered to compulsory retirement due to the circumstances available in that case. Government Advocate argued that unless the punishment awarded was grossly unjust and shocking the conscience of the Court, it has to be confirmed.

10. Here is a case where although punishment awarded was commensurate with the illegality of the misconduct, it is patently unjust inasmuch as the co-delinquent whose misconduct was even graver has been awarded with the punishment of reduction in rank and that his earning increment during the period of reduction may not have the effect of postponing the future increment, this petitioner as awarded with a punishment of reduction of pay and that it will have its own cumulative effect of affecting or postponing future increment even beyond period of reduction. In that way, it shocks the conscience and therefore, such portion is derogatory to that punishment awarded to the codelinquent viz., Md. Sultan Lone has to be eschewed, in order to have parity of punishment between the likes. Therefore, the punishment of reduction of pay Rs.1,040/- to Rs.1,000/- from 1.11.1996 is confirmed and it is modified that it will not have cumulative effect even beyond the period of reduction. Similarly, the suspension period is also regularised by taking it only period of suspension, making the petitioner not

entitled to anything more than the subsistence allowance. Thus, the punishment is modified to the effect that this alike the punishment of co-delinquent viz., Md. Sultan Lone. The Writ Petition is disposed of accordingly. No costs.

Index : yes
Website: Yes

vbs

To

The Commandant
CISF Unit, Chennai Port Trust
Chennai.